IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN

THURSDAY, THE 19TH OCTOBER 2006 / 27TH ASWINA 1928

SA.No. 762 of 1993()

AS.44/1990 of PRL.SUB COURT, KOZHIKODE
OS.460/1986 of M.C.,KOZHIKODE-II
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APPELLANT:

V.P.MOOSA, S/O.AHAMMADKUTTY,
AGED 65 YEARS, THOTTATHIL,
KUNNAMANGALAM AMSOM AND DESOM,
KOZHIKODE DISTRICT.

BY ADV. SRI.P.K.SURESH KUMAR

RESPONDENT:

DEVI CHIT FUNDS (P) LTD., BY MANAGING
DIRECTOR, T.V. CHANDUKUTTY
S/O.KANDAKUTTY, AGED 54 YEARS,
THANKAVALAPPIL, REGD. OFFICE AT NAGARAM
AMSOM DESOM OF KOZHIKODE TALUK.

BY ADV. SRI.M.C.SEN

THIS SECOND APPEAL HAVING BEEN FINALLY HEARD ON 19/10/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R. RAMAN, J.

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S.A. NO. 762/1993

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DATED THIS, THE 19TH DAY OF OCTOBER, 2006

J U D G M EN T

First defendant in a suit for recovery of money is the appellant herein.

2. According to the plaint averments, the plaintiff is a private limited Company having its registered Office at Calicut and branch Office at Mangalore. The Mangalore branch of the plaintiff company was conducting kuri having a sala of Rs. 20,000 and 40 tickets at the rate of Rs. 5,000/- per ticket. The first defendant (appellant herein) was a subscriber to 27th & 28th tickets of the said kuri. The 28th ticket was auctioned at Mangalore branch which was bid by the first defendant and he executed a promissory note in favour of the plaintiff for an amount of Rs.14,000/- on 5.5.1983. After executing the promissory note, he paid amount towards the chitty up to 38th installment and paid Rs. 100/- towards the 39th installment. A sum of Rs. 900/- including the subsequent one installment and Rs.400/- towards the 39th installment were kept in arrears by the first defendant. According to the plaintiff, he also bid the 29th ticket which was auctioned at Mangalore Branch and the kuri amount was paid by the plaintiff to the first

defendant from its registered office at Calicut. For the future installments, there also, he executed a promissory note for Rs. 10,000/- and after the execution of the pronote, he paid amounts up to 33rd installment and Rs. 100/- was paid towards the 34th installment. According to the plaintiff, Rs. 400/- towards the 34th installment and the subsequent installments were not paid by the first defendant. Thus, the amounts due from the first defendant towards ticket No. 29 is Rs. 3,400/-. According to the plaintiff, a total amount of Rs. 4,300/- is due from the first defendant to him. To the notice issued to the defendants, he replied raising untenable contentions, which necessitated to file the suit.

3. The defendants filed a joint written statement contending that the first defendant joined the kuri conducted by the Mangalore Branch of the plaintiff is not correct, that the plaintiff is not having any branch at Mangalore and is not conducting any kuri there, that the first defendant had joined a kuri at the plaintiff's office at Calicut which was auctioned and the amount was paid to him at Calicut, that the promissory note was also executed at Calicut, that the plaintiff company is not registered under the provisions of the Kerala Chitties Act and hence based on a void transaction, no relief could be claimed.

4. Upon the pleadings, necessary issues were framed by the trial court. On the side of the plaintiff, PW.1 was examined and Exts.A1 to A23 were marked. DW.1 was examined and Exts.B1 to B3 were marked on the side of the defendants.

5. The trial court found that the documents produced by the plaintiff and the documents executed by the defendants in favour of the plaintiff would prove that the plaintiff company is having a branch at Mangalore and the kuri was conducted and bid by the defendant as contented, at Mangalore . Accordingly, the suit was decreed. The defendant appealed and at the appellate stage I.A. 3718/1987 was produced which is a certified copy of the deposition of PW.1 in another case so as to belie the admission made by him, and the same has been marked as Ext.B4. The court below considered Ext.B4 to see whether the case put forth by the plaintiff is belied by the deposition contained in Ext.B4 and found that even if in Ext.B4 it is stated that there were five workers in Mangalore and two of them used to write the ledger and one clerk used to write the cash book, it will evidently show that there is a branch office even though the subscribers may be from Calicut. Therefore, relying on the admissions, the defendants could not establish the case as put forth by them that there was no transaction from mangalore. From a perusal of the judgment under appeal, especially, para

10 thereof, it can be seen that it was after analyzing the entire evidence in the case that the case of the plaintiff that transaction has taken place at Mangalore has been accepted by the appellate court. If so, this is only on an appreciation of the evidence on record as to whether the transaction took place at Mangalore or at Calicut and both the courts below concurrently found on such question of fact. There is hardly any question of law, much less any substantial question of law arises for consideration in this second appeal.

The second appeal is without any merit. It is accordingly dismissed; however, in the facts and circumstances, without any order as to costs.

P.R. RAMAN,
(JUDGE)